EXPLANATORY MEMORANDUM TO

THE CRIMINAL JUSTICE ACT 2003 (SURCHARGE) (AMENDMENT) ORDER 2020

2020 No. 310

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order is intended to increase the amount of the surcharge imposed on offenders under section 161B of the Criminal Justice Act 2003, the proceeds of which are used to fund support for victims and witnesses of crime. The Order increases the current surcharge levels by 5%.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 This instrument extends to England and Wales.

4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

5.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Section 161B of the Criminal Justice Act requires that a court, when dealing with a person for one or more offences, must order the person to pay a surcharge. That duty was added to the Criminal Justice Act by the Domestic Violence, Crime and Victims Act 2004. The current surcharge levels are set out in the Schedule to the 2012 Order, and vary according to the age of the offender and the sentence imposed.

6.2 The Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2014 amended the 2012 Order, extending the circumstances in which the surcharge is payable to include when an immediate custodial sentence is imposed in the magistrates' court.

6.3 The Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2016 ("the 2016 Order") further amended the 2012 Order, increasing the levels of surcharge to be imposed by replacing the Schedule to the 2012 Order with a new Schedule. The 2016 Order increased the surcharge in line with expected inflation between October 2012 and March 2018 plus a 5% uplift, applied annually and compounded. The Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2019 further increased the surcharge in line with inflation for 2018/19 and expected inflation for 2019/20 and 2020/21.

7. Policy background

What is being done and why?

7.1 The aim of the surcharge is to ensure offenders hold some responsibility for the cost of supporting victims and witnesses of crime. Income from the Surcharge contributes to the Victim and Witness Budget ("the Budget"), which grant funds support to help victims and witnesses of crime.

7.2 Overall amounts for the last five years are set out in the table below:

Financial Year	Surcharge collected *	Surcharge contribution to the Victim and Witness Budget*	Overall Victim and Witness Budget*
2014/15	£25m	£25m	£86m
2015/16	£28m	£18m**	£92m
2016/17	£31m	£27m**	£96m
2017/18	£35m	£31m**	£97m
2018/19	£34m	£31m**	£96m

*The amounts listed in the table have been rounded to the nearest £1m

** In these years, expected income from the Surcharge was forecast into the Budget. If revenue raised from the Surcharge surpassed the forecasted amount, the excess was put towards compensating victims of violent crime through the Criminal Injuries Compensation Scheme. From the 2019/20 financial year, all revenue raised from the Surcharge will be included in the victim and witness receipts (as was the case prior to 2015/16).

NB: Some figures are slightly different to the figures set out in the Explanatory Memorandum published with the 2019 Order. Those figures were incorrectly rounded.

7.3 The majority of the Budget (c.70% in 2018/19) is used to fund Police and Crime Commissioners (PCCs), who are required by grant agreements to use the funding to provide or commission local support services for victims of crime across England and Wales. PCCs are well placed to understand the needs of their communities, respond to local demands and priorities, and commission services tailored to meet local needs.

7.4 The remainder of the Budget is used to nationally commission support services such as: specialist sexual violence services across England and Wales, which support victims of sexual abuse, including recent and non-recent child sexual abuse; the Court Based Witness Service, which provides on the day support for witnesses in court; and

the Homicide Service, which supports families bereaved by homicide. For the full details on the support services the MoJ grant funds, please refer to the Victim and Witness Grant Funding webpage.

7.5 The Government is committed to ensuring victims receive help to cope and recover, and that witnesses are supported to give their best evidence in court. The cross-government Victims Strategy, published September 2018, highlights the significant impact crime has on the emotional and physical wellbeing of victims and how important it is that victims receive support. The Strategy also notes that witnesses who receive support are more likely to engage with the criminal justice system. For further detail see the Victims Strategy.

7.6 The purpose of this Order is to increase the Surcharge by 5% rounded to the nearest pound. The Surcharge paid by offenders will increase by up to a maximum of £9, depending on sentence.

7.7 The tables below provide the current and new levels of surcharge as specified in this Order.

Sentence	**Current surcharge levels, as specified in the 2019 Order**		
	Adults (18 +)	**Youth (under 18 at time of offence)**	**Organisations**
Conditional discharge	£21	£16	£21
Fine	10% of the fine value, min £32 max £181	£21	10% of the fine value, min £32 max £181
Community order	£90	£21	
Suspended sentence of imprisonment (6 months or less)	£122	£32	
Suspended sentence of imprisonment (over 6 months)	£149	£32	
Immediate custodial sentence (6 months or less)	£122	£32	
Immediate custodial sentence (more than 6 months – up to and including 2 years)	£149	£32	
Immediate custodial sentence (over 2 years – life)	£181	£32	
Youth rehabilitation order or referral order		£21	

Sentence	New surcharge levels, as specified in the 2020 Order		
	Adults (18 +)	**Youth (under 18 at time of offence)**	**Organisations**
Conditional discharge	£22	£17	£22
Fine	10% of fine value, min £34 max £190	£22	10% of fine value, min £34 max £190
Community order	£95	£22	
Suspended sentence of imprisonment (6 months or less)	£128	£34	
Suspended sentence of imprisonment (over 6 months)	£156	£34	
Immediate custodial sentence (6 months or less)	£128	£34	
Immediate custodial sentence (more than 6 months – up to and including 2 years)	£156	£34	
Immediate custodial sentence (over 2 years – life)	£190	£34	
Youth rehabilitation order or referral order		£22	

7.8 The surcharge is collected by the National Compliance and Enforcement Service (NCES), which is a part of HM Courts and Tribunals Service (HMCTS). Financial penalties are usually collected in instalments, and an increase to the surcharge may lengthen the time taken for successful collection. NCES continue to work to develop their collection and enforcement capabilities to ensure that these lengthier collection times can be managed. This includes the learnings from the Historic Debt Project, that ran between September 2016 and October 2018, which have now been embedded into business as usual processes.

7.9 The Historic Debt Project highlighted the level of outstanding debt that had been accumulating over the years from unpaid fines and financial impositions, and had subsequently been written off where debtors could not be traced. The project introduced new technology, intelligence and tracing tools to the debt collection process. As at the end of January 2020 total collections from the accounts that were re-worked using this new technology and tools were over £43m.

7.10 The new debt collection processes from the project were incorporated into the ordinary business as usual enforcement process. This ensures that debt from old accounts that would otherwise have been written off is now being reviewed on a six-monthly cycle, which over time will improve the enforcement of older debt. For the 2019/20 financial year, it is projected that £6m in old debt that would otherwise be written off will be collected. These improvements in debt collection as a result of the Project will help to ensure that the increased surcharge levels are enforced effectively.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 At this stage we do not consider it necessary to consolidate the relevant secondary legislation.

10. Consultation outcome

10.1 The last public consultation regarding the surcharge was part of the 2012 Getting it Right for Victims and Witnesses consultation. This was ahead of a material change to the surcharge which saw it expand from a £15 flat fee imposed on offenders who received a fine, to a charge imposed on all offenders varying in correlation to the severity of the sentence imposed.

10.2 We do not consider that further consultation is required in relation to the changes made by this Order, as the increase is relatively minor. We have, however, informed key stakeholders of our plans.

11. Guidance

11.1 Information and guidance about the increase to the surcharge levels will be made available to the judiciary, magistracy and HMCTS operational staff ahead of the changes coming into force. The Sentencing Council will also be notified so that their guidance can be updated.

11.2 Guidance on the changes will also be issued through a Ministry of Justice Circular which will be sent to other Criminal Justice System partners and stakeholders.

12. Impact

12.1 An Impact Assessment has not been prepared for this instrument because there is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no significant impact on the public sector. The main bodies that will be impacted are MoJ and HMCTS.

12.3 This policy is expected to increase MoJ income by £3.9m from 2020/21 to 2023/24, and from then on by an estimated £1.2m per year. This income will contribute towards the Victim and Witness Budget.

12.4 The estimated increase in income represents a central scenario which incorporates optimism bias. This accounts for the likely outcome that an increase in victim surcharge reduces the propensity of offenders to pay. The level of optimism bias is

based on observed decreases in the victim surcharge collection rate following historic increases in victim surcharge.

12.5 The table below shows the forecast income profile of this policy:

Forecast additional VS income from 5% uplift			
2020/21	2021/22	2022/23	2023/24
£0.5m	£1.0m	£1.2m	£1.2m

12.6 MoJ and HMCTS are likely to face minor additional administrative costs in preparing for the change. We expect that these costs will be minimal and met by business as usual activities.

12.7 There is a small risk that an increase in the surcharge could in turn impact on government departments that are owed money by offenders but are further down the prioritisation list. Surcharge payments are behind compensation but take precedence over fines and some other deductions from offenders such as prosecution costs. An increase to the surcharge could mean that it takes longer for these other debts to be paid back in full.

12.8 An Equality Statement is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 Amounts collected and collection rates are monitored via our routine forecasting and management accounts processes.

15. Contact

15.1 Louisa Carrad at the Ministry of Justice, email: louisa.carrad@justice.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Catherine Hinwood, Deputy Director for Victim and Witness Policy at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Alex Chalk MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.